

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
) FO Docket No. 91-301
Petition for Waiver of the Commission's) FO Docket No. 91-171
Emergency Alert Requirements for)
Cable Television Systems)

To: Joseph Casey
Chief, Technical & Public Safety Division
Enforcement Bureau

**REQUEST THAT MATERIALS SUBMITTED TO THE COMMISSION BE
WITHHELD FROM PUBLIC INSPECTION**

Pursuant to 47 C.F.R. § 0.459, Northland Cable Ventures LLC ("Northland") respectfully requests that the information being submitted in its petition for a waiver from the Emergency Alert System ("EAS") requirements at 76 C.F.R. § 11.11(a), not be made routinely available for public inspection. Since financial information about Northland is interspersed throughout, it is not feasible to separate the confidential information from the non-confidential information.

The EAS waiver petition contains highly sensitive business and financial information about the operations of Northland. This information includes a statement of revenues and expenses and retained earnings for that year. Such information is not customarily disclosed to the public. Northland has not previously disclosed this information to the public or to third parties who are not fiduciaries or held to confidentiality arrangements. Northland has taken extensive measures to avoid disclosure of the confidential information to third parties, through employee confidentiality agreements and by limiting access only to key personnel. If disclosed, the information would likely cause substantial competitive injury to Northland.

The FCC's public disclosure regulations implement, and incorporate, Exemption 4 of the Freedom of Information Act, 5 U.S.C. §552(b)(4), and the Trade Secrets Act, 18 U.S.C. § 1905. *See* 47 C.F.R. §0.457(c)(5) and (d). Under Exemption 4, information is exempt from public disclosure if it is (1) commercial or financial in nature, (2) obtained from a person, and (3) privileged or confidential in nature. 5 U.S.C. §552(b)(4). The information covered by this request is exempt from public disclosure under Exemption 4 of the FOIA and the FCC's regulations because it constitutes commercial and financial information, obtained from a person, which is confidential in nature.¹

Similarly, Section 1905 of Title 18 of the United States Code makes it unlawful for federal government agencies or employees to disclose information relating to "the trade secrets, processes, operations, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association ..." Information that is exempt from release under Exemption 4 of the FOIA is *prohibited* from being disclosed, under 18 U.S.C. § 1905, unless disclosure is "authorized by law" by another statute other than the FOIA.² Because no other statute authorizes the release of the information at issue here, disclosure of the Documents is prohibited by the criminal provisions of 18 U.S.C. §1905.³

¹ Under Exemption 4 of the FOIA, the terms "commercial" and "financial" are to be given their "ordinary meaning", and thus include information in which a submitter has a "commercial interest." *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290 (D.C. Cir. 1983); *accord, Washington Research Project, Inc. v. HEW*, 504 F.2d 238, 244 n.6 (D.C. Cir. 1974), *cert. denied*, 421 U.S. 963 (1975). "Commercial interest" has been interpreted broadly to include anything "pertaining or relating to or dealing with commerce." *American Airlines, Inc. v. National Mediation Bd.*, 588 F.2d 863, 870 (2d Cir. 1978). The term "person", for FOIA purposes, includes entities such as Northland. *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Comm'n*, 830 F.2d 871 n.15 (D.C. Cir. 1987) ("For FOIA purposes a person may be a partnership, corporation, association, or public or private organization other than an agency"). Where submission of information is mandatory, information is confidential or privileged under Exemption 4 if, among other things, disclosure is likely to cause substantial harm to the competitive person from whom the information was obtained. *Judicial Watch, Inc. v. Export-Import Bank*, 108 F. Supp.2d 19, 28-29 (D.D.C. 2000)(citing *Critical Mass*, 975 F.2d at 878). As explained above, disclosure is likely to cause competitive harm.

² *See Chrysler Corp. v. Brown*, 441 U.S. 281 (1979) (Exemption 4 and 18 U.S.C. § 1905 are "coextensive", and §1905 prohibits the disclosure of confidential business information unless release is authorized by a federal statute other than the FOIA); *see also* 47 C.F.R. § 0.457(c)(5) and (d).

The foregoing demonstrates, by a preponderance of the evidence (*see* 47 C.F.R. § 0.459(d)(2)), that the information at issue is confidential within the meaning of Exemption 4 of the FOIA and the rules of the Federal Communications Commission, and that disclosure is prohibited by 18 U.S.C. §1905. Northland therefore requests that the submitted information be deemed confidential, that FCC prohibit their public disclosure or inspection, and that Northland be informed of FCC's determination on this issue.

This petition presents only a preliminary explanation of the bases for this request for confidential treatment. It would be unduly burdensome at this time to provide a more detailed and particularized justification on a page-by-page basis, when it is not presently known whether public disclosure of the information will be sought. Accordingly, we request that, in the event a request for disclosure of any of these documents is received by the FCC, Northland be provided with notice of, and an opportunity to object to, any such request prior to release of the Documents. *See* 47 C.F.R. § 0.459(d)(1). Additionally, Northland requests that the information

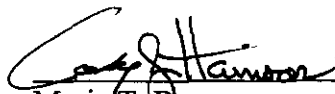
³ *See CNA Fin. Corp. v. DoNorthlandn*, 830 F.2d 1132, 1151 (D.C. Cir. 1987).

remain confidential and upon the Commission's determination of the EAS waiver petition, it be returned to Northland. If the Commission has any questions regarding this petition, please contact Maria Browne or Cody Harrison at the address below.

Respectfully submitted,

Northland Cable Properties, Inc.

By:



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